

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12389 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

UNION OF INDIA & 1 - Petitioner(s)
Versus
ML MATURKAR U D C - Respondent(s)

=====

Appearance :

MR JITENDRA MALKAN for Petitioner(s) : 1 - 2.
MR NIKHIL S KARIEL for Respondent(s) : 1,

=====

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 20/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioners - Union of India and Foreign Trade Officer have filed this petition under Article 226 and 227 of the Constitution and challenged the impugned Judgment and order dated 10.1.2003 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short "Tribunal") in OA No. 689 of 1997, filed by the respondent - original applicant, whereby the learned Tribunal allowed the Application and quashed and set aside the impugned order of penalty imposed by the Disciplinary Authority and the order passed by the Reviewing Authority of reduction in the immediate lower stage in the time scale of pay for two years with all consequences.

The original applicant was serving as Typist in the Office of Joint Director of Foreign Trade, Ahmedabad - present petitioner No.2. Charge sheet dated 22.7.1985 for the incident of 6.11.1980, was served after a period of almost five years. It was alleged in the charge-sheet that Shri M.L. Vansfoda, LDC in the office of Joint Chief Controller of Imports & Exports, Ahmedabad, was dealing with the case of M/s. Economic Traders (Gujarat) Ltd., Rajkot, of issuing additional license dated 6.11.1980 for Rs.44,60,722/-. While doing so he (Shri Vansfoda) failed to maintain absolute integrity and devotion to duty. Common inquiry was held in the charges against Shri H.C.Dabrai, M. C. Vansfoda and S.B.Kotivan. During the inquiry Shri Kotivan expired, hence the

charge against him was deleted. However, the charge against two other remaining officers Shri Dabrai and Shri Vansfoda was held to be proved by the Inquiry Officer. Their case was sent to U.P.S.C. for advise as the Disciplinary Authority was of the opinion that charges were rightly found to be proved. Therefore, penalty was imposed on both the officers. However, UPSC did not agree with the same and advised against it. The Disciplinary Authority did not agree with the advise of the UPSC and after obtaining the approval from CVC and consulting the department of Personnel and Training imposed penalty.

The case of the petitioner was that he was merely a Typist and whatever dictated to him by his superior officer was transcribed by him in the license. However, the Disciplinary Authority did not accept his defence and came to the conclusion that there was nothing to show that he had done as per the dictate of the superior officer. Thus, the order of penalty of stoppage of reduction of lower stage in the time scale of pay for a period of two years was imposed with future consequences. The Reviewing Authority has also agreed with the view taken by the Disciplinary Authority. The said orders were challenged before the learned Tribunal and the learned Tribunal by its impugned Judgment and order dated 10.1.2003 allowed the application and quashed both the orders passed by the Disciplinary Authority as well as the Reviewing Authority which is challenged in this petition.

Though this petition is labeled both, under Article 226 and 227 of the Constitution, strictly speaking, it is a petition under Article 227 of the Constitution. The scope of which is very narrow and limited. This Court can only interfere with the order passed by the Tribunal only if any jurisdictional error is committed by the learned Tribunal while passing the order. However, it cannot be interfered with the order passed by the learned Tribunal even if there is an error committed either on law or facts. That is not the case herein. In absence of any error committed by the learned Tribunal, either on facts or law, much less jurisdictional error and there is no question of any interference in the impugned order passed by the learned Tribunal.

In the instant case, as stated earlier, the petitioner was merely a Typist and his plausible defence that he had only typed whatever told to him in the license was not believed either by the Inquiry Officer or by the Disciplinary Authority. But, the UPSC was of the considered opinion that his defence was plausible and, therefore, acceptable. It is a different matter that the Disciplinary Authority did not agree with the advise of the U.P.S.C. However, we are in complete agreement with the reasoning assigned by the learned Tribunal of quashing and setting aside the impugned order passed by the Authority. If the Tribunal has thought it fit to interfere with the impugned order of penalty and quashed it then there

is no question of interference by this Court after a period of more than 27 years of the incident.

In view of the above discussion, this petition fails and is hereby dismissed. Rule discharged. No order as to costs.

(B. J. SHETHNA, J.)

(M. D. SHAH, J.)

sas